

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10**

DUKE UNIVERSITY

Employer

and

Case 10-RC-187957

**SERVICE EMPLOYEES INTERNATIONAL
UNION CLC/CTW**

Petitioner

DECISION AND DIRECTION OF ELECTION

The Employer, Duke University, is a North Carolina corporation with its principle office located in Durham, North Carolina. It operates a private non-profit university providing higher education. The Petitioner, Service Employees International Union, CLC/CTW, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act. The petition, as amended, indicates that the Petitioner seeks to represent a unit of all PhD students in Duke University departments housed at its campuses in Durham and Beaufort, North Carolina, who are working toward PhD degrees offered by the Duke Graduate School and who are employed by Duke University to provide instructional services in undergraduate or graduate-level courses or labs (including, but not limited to, Teaching Assistants, Graduate Assistants, Laboratory Assistants, Teaching Apprentices, Instructors, Graders, Preceptors, Section Leaders, and Tutors) or to provide research services (including but not limited to Research Assistants and Graduate Assistants); excluding all students at Duke Kunshan University and Duke-NUS Medical School, all students not working towards PhD degrees offered by the Duke Graduate School and all other employees, guards and supervisors as defined in the Act.

The Employer contends that the petition should be dismissed because the petitioned-for students are not employees within the meaning of Section 2(3) of the Act. The Employer also

contends that should an election be directed, it should be conducted by manual ballot and that a traditional eligibility formula should apply. The Union contends that the election should be conducted by mail ballot and that a one-year “look-back” eligibility formula should apply, to include not only students who are currently serving in the petitioned-for positions but those who have served in those capacities at any time during the past year.

A hearing officer of the Board held a hearing in this matter. During the hearing, the parties submitted evidence, including a joint stipulation of facts. After the close of the record, the parties filed post-hearing briefs which were also duly considered. As described below, based on the record and relevant Board cases, including the Board’s decision in *Columbia University*, 364 NLRB No. 90 (2016), I find that the students sought in the petition are employees within the meaning of the Act. Accordingly, I am directing an election in an appropriate unit as set forth below.

OVERVIEW OF OPERATIONS

The Employer is a private research university. Its facilities in Durham, North Carolina are comprised of four contiguous campuses, East, Central, West and Medical Center as well as a Downtown campus nearby. In addition, there is a Marine Laboratory located in Beaufort, North Carolina, about 180 miles from Durham. The university employs 1714 tenured or tenure-track faculty and over 1700 non-tenure track faculty. Approximately 6500 undergraduate students and 8000 graduate and professional students are presently enrolled. Around 2500 of the 8000 graduate students are PhD students. The University derives most of its revenue from tuition and research grants. In fiscal year 2016, gross revenue from tuition and fees was \$733 million. During the same period, revenue from research grants and contracts was about \$1.13 billion.

The University is comprised of ten schools or colleges¹, each of which has a dean who reports to the Provost of the University or, in the case of the Nursing and Medical Schools, to the Chancellor for Health Affairs. Dr. Paula McClain is the Dean of the Graduate School and Vice Provost of Graduate Education. She is responsible for overseeing all PhD programs administered by the other schools. The university also offers Masters programs, for which the Graduate School is ultimately responsible, as well as a number of other advanced degrees, including JDs, MBAs, MPPs and other non-PhD professional degrees that are not within the Graduate School. All PhD programs are governed by the Graduate School. Each program has a Director of Graduate Studies (DGS) who administers the rules and regulations and advocates for the needs of the program and its students. Each year, the Graduate School publishes its Bulletin containing, among other things, the rules and regulations that apply to all PhD and Masters programs.

A total of 47 PhD programs are offered through the Graduate School. These programs are grouped into four divisions: Humanities, Social Sciences, Natural Sciences and Basic Medical Sciences. The Graduate School establishes the overall degree requirements common to all PhDs, while the departments establish the specific requirements for their programs. Applications for PhD programs are first evaluated by the departments. Each department or program then submits its recommendations for admissions to the Graduate School, which makes final approvals.

¹ Arts & Sciences, Divinity School, Fuqua School of Business, Law School, Nicholas School of the Environment, Pratt School of Engineering, Sanford School of Public Policy, School of Medicine, School of Nursing and the Graduate School

FUNDING FOR PHD STUDENTS

When students² are admitted to a PhD program, the Graduate School guarantees them five years of funding, which covers tuition, fees and a stipend. If a student takes longer than five years to complete his or her PhD, their departments will usually pay tuition and fees during the sixth year. Students are encouraged to apply for external funding for subsequent years of study. The Graduate School offers fellowships for students in their sixth or subsequent years.

Doctoral students receive six years of free health coverage through the Duke Student Medical Insurance Plan (the “SMIP”). They are also eligible for a child care subsidy of up to \$5,000 per year and seven weeks of paid parental leave. In addition coverage under the SMIP, a medical assistance program, provides students with up to \$5,000 or more, depending on the circumstances, for medical expenses not covered by the SMIP. PhD students are eligible for short term loans of up to \$2,500 at competitive interest rates offered through a program negotiated between the Graduate School and the Duke Credit Union. Emergency loans of up to \$1000 are also available from an endowment account established specifically for graduate students. Although it is asserted in the parties’ stipulation that the benefits PhD students receive are “significantly different” from the benefits offered to other Duke employees, the stipulation and the record are silent as to what benefits those other employees have. The stipulation does specify that PhD student benefits are provided through the Graduate School and not through the university’s Human Resources and Benefits departments, which handle these matters for other employees.

²Unless otherwise specified herein, the term “students” will be used herein to refer only to PhD students.

In addition to tuition and healthcare, students receive annual nine- or twelve-month stipends, depending on the student's department. Twelve-month stipends are provided for students in the Basic Medical Science, Engineering and some Natural Science departments. These students are usually funded through a faculty member's research grant or an external fellowship. Students in Humanities, Social Science and other Natural Science departments receive nine-month stipends. Funding for these students is available for the remaining three months of the year through summer research fellowships. Applicants must submit a one page proposal describing how they intend to pursue their coursework and other training over the summer. Summer research fellowships for first and second year students are routinely given to anyone who applies. Students with nine month stipends who are beyond their first two years may apply for competitive summer fellowships. About 150 of these were awarded last year.

There are small variations in the stipend amounts, depending on the school in which the degree program is based, but all are in the range of \$27,000 to slightly over \$30,000.³ The stipend amounts are established by the Graduate School. In setting these amounts, the Graduate School considers the stipends available at peer institutions as well as the relative cost of living in Durham, North Carolina.

Stipends can be comprised of fellowships, which do not require any work or "service obligation" from the student, as well as teaching or research assistantships, which do require some service on the student's part. Unlike tuition, fee and health insurance payments, which are posted to the student's bursar account, stipend and assistantship payments are made through the university's payroll system. Stipends are paid in nine or twelve monthly installments, depending on the type of stipend the student has. The portion of a student's stipend from a

³ Stipends across all schools will be equalized for the 2017-2018 academic year.

fellowship is considered non-compensatory. The university does not have any reporting or withholding requirements on fellowships but students may elect withholding by submitting an IRS Form W-4. The portion of the stipend allocated to research assistant (RA) or teaching assistant (TA) services for the semester is designated as “compensatory” and is reported on a W-2 form. Non-compensatory stipends are paid on the last business day of the month while compensatory stipends are paid on the 25th of each month.

Students generally receive \$6000 per course for serving as a TA and \$3000 for serving as a grader. Head TAs, sometimes referred to by different titles in certain departments, are paid an additional \$3000 per academic year. Students in the Humanities, Social Sciences and some Natural Science departments, generally those on nine-month stipends, receive \$3000 per semester for serving as RAs. These amounts are treated as a compensatory portion of the stipend.

Students funded through research grants, generally those on twelve-month stipends, are paid around \$2500 every month for serving as an RA. These amounts are paid on the 25th of every month and the entire amount is considered compensatory. The amount of the stipend does not change during semesters when an RA on a twelve-month stipend is also serving as a TA. The Graduate School’s DGS manual states:

Compensation for the living wage (i.e. salary) for PhD student research assistants must be paid through the faculty/staff payroll system. This coupled with tuition remission and fringe benefits must reflect appropriate compensation for work services performed on the research grant or institutional research project. Student compensation must be charged to each funding source in proportion to the level of effort expended.

Students on nine-month stipends do not earn any formal paid vacation but they generally only perform their duties when school is in session. Once the semester has ended, they are free to leave campus. If they need to be absent during the semester, they are required to consult with the professor to whom they are assigned. One program, the Rubenstein Internship, was cautioned by the Graduate School that it could not establish its own leave policy and require students to stay on campus when their academic programs did not otherwise require them to do so.

Students on twelve-month stipends are officially entitled to a minimum of two weeks' paid vacation, although the faculty member in whose lab they work can allow more if he or she wishes to do so. As described more fully below, most labs are staffed year round.

The Graduate School allows students to supplement their stipends up to a maximum of \$3000 per academic year with additional TA or RA assignments. The department's DGS is supposed to contact the Graduate School when students seek out these extra assignments so that the Graduate School can confirm that the student will receive nothing above the \$3000 limit. The Graduate School also imposes a limit on the number of hours students may work on TA and RA assignments. Students are to spend no more than 19.9 hours per week on "non-dissertation-related research appointments, teaching assistantships or other instructional positions, or other employment (both on and off campus)." The 19.9 hour limit does not apply to students working as RAs in laboratories that are funded externally i.e. there is no limit on the number of hours those RAs may spend in their labs.

Several reasons are cited for these policies. First, the number of TA and RA assignments is limited and the Graduate School wants to ensure these opportunities are available for as many students as possible. Second, they want students to focus on their academics and the completion

of their degrees, not trying to accumulate as much money as possible. The DGS manual states that the “student status” of PhD candidates who work more than 19.9 hours a week might be jeopardized. The DGS is “responsible for ensuring that students with multiple assignments within Duke are not compensated for greater than 19.9 hours of work per week.”

Departments within the Graduate School have budgeted graduate award banks out of which stipends and other fellowships are paid.⁴ Some students have what is referred to as “outside funding” in the form of fellowships or scholarships. The record reflects that this “outside funding” is submitted directly to the university rather than to the students. The university then distributes the funds to students in monthly installments throughout the year. When students in a particular department receive external funding and fellowships, the amounts that otherwise would have been paid to the student through the department’s budget remain in the department’s award bank.

ACADEMIC REQUIREMENTS

PhD students in most programs complete their required coursework during their first three years. After they complete their coursework, they take an exam which is referred to as either a preliminary exam or a qualifying exam. All students must pass their exams by the end of their third year. Students who have finished their coursework and passed their exams are

⁴ Scholarships usually cover tuition and fees while fellowships cover stipends. Most fellowships are in an amount equal to or greater than the student would otherwise receive as a stipend. For example, a National Science Foundation (NSF) fellowship provides the recipient with \$35,000 per year. Under the terms of the fellowship, students who have been awarded an NSF are not allowed to do any work inside or outside the university and so are not allowed to be TAs or RAs. Students are allowed to receive a maximum of \$5000 in grants or fellowships over what their stipends would otherwise be. Sometimes fellowships also pay for health insurance but if they do not, the Graduate School pays for coverage.

referred to as having “attained candidacy” or “advanced to candidacy”. At this point, students begin working on their dissertations.

The Graduate School requires evaluations of all PhD students in the spring of each academic year. These evaluations are completed by the faculty and each program handles them differently. In the Political Science department, for example, faculty members meet to discuss each student’s progress and performance. The evaluation would include student evaluations from any classes the student may have taught. Students then meet with their faculty advisor or the department’s DGS to discuss their progress and performance.

Students may be involuntarily separated from the PhD program in one of two ways. If the department determines that the student has not made sufficient progress, the student will not be reappointed. This means that the Graduate School would no longer provide tuition, healthcare and stipends. Students may also be separated through academic dismissal, which generally involves academic misconduct or code violations.

TRAINING FOR RESEARCH AND TEACHING

The Graduate School considers learning to teach and to evaluate student work as an integral part of students’ education. Every new PhD student receives a document called “Best Practices and Core Expectations” during orientation. This document lists “preparation for and experience in a variety of teaching roles” as one of the four components of a graduate education.

The Graduate School offers several optional teacher training programs to PhD students. To complete the Certificate in College Teaching (CCT) program, students must take two courses in college teaching, serve in a formal teaching role for at least one semester, both observe and be observed by peers in the program, and complete an online teaching portfolio.

Through the Preparing Future Faculty (PFF) program, students learn about faculty roles and responsibilities through interaction with faculty members at six partner institutions in North Carolina. Students are paired with a faculty member and shadow that professor for a semester while they teach and attend faculty meetings. Students are admitted into this program as a result of a competitive application process. Students do not receive course credit for these programs but participation in the PFF and CCT programs is noted on student transcripts and students who complete the CCT program receive a certificate upon graduation.

The Graduate School awards Bass Instructional Fellowships each year to PhD students seeking to become Bass Instructors of Record, Bass Instructional Teaching Assistants or Bass Online Apprentices. Bass Instructors of Record design and teach their own courses. About 8 of these fellowships are awarded each year. Bass Teaching Assistants are generally students seeking a degree in a department that contains few or no undergraduates, such as the Medical School, where there are limited opportunities to teach. The fellowship funds them to TA in another department. Five or six of these fellowships are awarded each year. Bass Online Apprentices work with the university's Center for Instruction Technology to design and produce Massive Online Open Courses, which are free classes open to the public.

In addition to these more formal programs, the Graduate School offers workshops and discussion groups about teaching, research and career development. Every PhD student is also required to complete a six-hour Responsible Conduct in Research ("RCR") orientation and to complete six to twelve additional hours of RCR training during their first four years of study. Separate orientation sessions are offered for Basic Medical Sciences, Natural Science & Engineering and Humanities & Social Science.

DUTIES AND FUNCTIONS OF TAs AND HUMANITIES & SOCIAL SCIENCES RAs

Students serving as TAs, instructors of record and graders in all departments and programs perform similar duties. However, the functions and duties of RAs in the Humanities, Social Sciences and some Natural Science departments are significantly different from RAs in the Engineering and Basic Medical Sciences programs. The duties and functions of laboratory RAs in those two departments will be discussed in more detail below.

RAs are usually assigned to assist a faculty member with research and writing projects. The faculty member tells the RA what tasks to perform. They may summarize articles on a particular topic, check footnotes and references, prepare bibliographies and indices, and print hard copies of documents on microfilm. Some programs have access to a research department that can perform services similar to those provided by RAs. RA assignments may be made by the departments or sometimes even between the professors themselves. For example, one student completed all the work that needed to be done for his assigned professor. He received a notice during the semester that he was being reassigned to another professor. Graders' duties, as the name implies, are limited to grading tests and assignments for a faculty member.

TAs are assigned to perform duties in credit-bearing courses for undergraduate and sometimes graduate students. TAs do not receive credit for the courses they assist in teaching and the courses are not listed on their transcripts. TAs work with a faculty member who is responsible for all aspects of a course, including content, syllabus, class presentations, tests and grading. The faculty member can choose which portions of the course he or she will delegate to the TA. TA duties can include giving lectures, conducting discussion and review sessions, holding office hours, and responding to student's questions by e-mail. If they grade papers, TAs usually consult the faculty member about how the grading should be done. They may also be

responsible for entering grades into the online system. However, the faculty member determines final grades. TAs in lab science courses may be responsible for conducting required lab sessions and grading the work students do in the lab.

Students serving as instructors of record do everything a faculty member would generally do including conducting lectures, designing lesson plans, creating and grading assignments and exams and issuing final grades. In order to be an instructor of record, a student must have finished his or her coursework and passed preliminary exams. The DGS handbook states that when a student is an instructor of record, the student should not take on any other teaching assignments during the semester.

The teaching that TAs⁵ perform is generally related to their academic discipline. Most students TA in courses within their department or in a related department but students can and do TA courses that are unrelated to their dissertation or academic focus. For example a PhD student writing her dissertation on Medieval Italian literature was assigned to TA introductory courses in modern Italian, which is very different from Medieval Italian.

TA assignments are handled differently across departments. Some students submit their course schedules and then their departments make the assignments. Others students are allowed to submit their preferences, which their departments will try to honor. In some cases, it is up to the student to contact a professor and arrange to TA his or her course. Students may choose to TA a course in a subject that interests them or is related to their dissertation but they may also choose to teach a particular course because it requires less time and effort on their part. For

⁵Unless otherwise specified herein, the term TA will be used to describe both teaching assistants and instructors of record.

example, a student may ask to TA a course for his faculty advisor because the student is familiar with that professor's work and how his or her courses are set up.

TEACHING REQUIREMENTS AND PREREQUISITES

Not all PhD students are required to teach. Out of the 47 departments that offer PhDs, there are six departments, all within the School of Medicine, in which teaching is neither required nor encouraged.⁶ There are nine departments in which students are funded primarily as RAs but are also required to serve as TAs.⁷ Most of these are programs are in the Basic Medical Science and Engineering departments. In eleven departments, students can either serve as RAs or TAs depending on their preferences and the availability of positions.⁸ Thus, students in these departments would not have to serve as TAs to complete their degrees so long as they have completed all of their required service as RAs. The remaining 21 departments have teaching requirements that students must complete to get their degrees.

Some departments have mandatory training for PhD candidates before they serve as TAs. In the Engineering School, for example, students are required to attend a one-hour teaching orientation session, which addresses such topics as communication skills, interactions with students, conducting effective discussion sections and grading techniques. Once Engineering students begin teaching, they are also required to take a teaching seminar concurrent with their

⁶ Cell Biology, Genetics and Genomics, Molecular Cancer Biology, Molecular Genetics and Microbiology, Pathology and Pharmacology and Cancer Biology.

⁷ Biochemistry, Computational Biology and Bioinformatics, Biomedical Engineering, Civil and Environmental Engineering, Electrical and Computer Engineering, Mechanical Engineering, Immunology, Medical Physics and Neurobiology

⁸ Biostatistics, Business Administration, Earth and Ocean Sciences, Economics, Environmental Policy University Program, Music, Philosophy, Physics, Political Science, Public Policy and Sociology.

TA appointment. In the Romance Studies department, students are required to take a class on foreign language pedagogy before they teach.

Some academic departments have established guidelines as to which semesters PhD students are expected to serve as TAs while others have none. For example, doctoral students in Biochemistry must serve as TAs during their second year of study. The Biomedical Engineering department, which also requires PhD students to TA for two semesters, does not specify when this requirement must be met. PhD students in the English department do not serve as TAs during their first and second years. Instead, they complete a Teaching Apprentice program in which they observe two undergraduate courses and meet with the professors of those courses each week to discuss pedagogical issues. They receive audit credit for these courses⁹. In their third through fifth years, doctoral students in the English department either serve as TAs or instructors of record. In Religious Studies, PhD students are expected to serve as RAs during both semesters of their first year. In their third through fifth years, they are expected to serve as TAs. The department announced at the end of the Fall 2016 semester that students can take two semesters off from teaching during their third through fifth years and still receive their full stipend.

TAs who are not performing well generally are not removed from their positions during the semester. There would be no practical way to accomplish this because it would not be possible to replace the TA with another student during the course of the semester. Once the assignments are made for the semester, an individual department has no choice but to work with the student to improve his or her skills. Generally, the professor to whom the student is assigned

⁹ The department handbook states, “The teaching apprenticeships are NOT ‘service work’ – grading, substituting, etc. – but pedagogical and mentoring opportunities for you.”

or the DGS would get involved to counsel the student and help him or her to improve. This includes sometimes sending the student to one of the Employer's teaching programs.

As noted above, Engineering students are required to TA for at least two semesters and take a concurrent teaching seminar, for which they receive course credit. These TAs are evaluated in the middle of the semester and again at the end and are rated on a scale of 1 to 5. Any TAs rated 3 or below are called in and counseled. Students who don't perform adequately may be required to take the seminar again and may not get credit for the TA assignment or both.

In the Mathematics department, students are not required to teach in order to get a PhD. About once every other year, there may be a student who lacks the skills to teach well. If the student has outside funding, he or she would not be required to serve in another capacity. If the student does not have outside funding, the department would try to find some other position for him or her, such as an RA or a grader, so that he or she could still receive a full stipend.

LABORATORY RAs IN ENGINEERING AND BASIC MEDICAL SCIENCES

In the Engineering School, Basic Medical Sciences departments in the Medical School and some Natural Science departments, the faculty direct and conduct research in their own laboratories, which are funded entirely through research grants. A professor who runs a laboratory funded by a grant is referred to as the primary investigator (PI) on the grant. Grants may come from government entities such as the National Sciences Foundation, National Institute of Health, and Department of Defense, non-profit organizations or corporations. An average PI receives about a million dollars a year in research grants. Grants are paid directly to the university and around fifty percent of the grant is allocated to the university as overhead. The university then distributes the remaining amount to the lab. The university expects a research professor to recoup fifty percent of his or her salary through external grant funding.

RAs in these programs receive twelve-month stipends and conduct research pursuant to the professors' external research grants. Their research must be related to the grant under which they are supported. By necessity, a student's dissertation topic will be closely related to the work being done in the lab and may even be dictated by the terms of the grant. In addition to the PI and RAs, research laboratories may be staffed by post-doctoral fellows, research technicians, research analysts, lab managers and staff scientists. PIs are required to provide periodic progress reports about their expenditures and the work conducted on the grant. The names of all laboratory personnel and the functions they perform are listed on these reports.

All patents developed using Employer facilities and resources, including external funds directed to the university, are owned by the university unless otherwise required by the grantor. This policy applies to RAs as well their PI and all other non-student employees of the lab. Therefore, the university owns the patents that RAs develop.

Most research laboratories are staffed year-round, seven days a week. Many RAs work 60 hours a week or more in their labs and, depending on the nature of the work they are doing, this may also include nights and weekends. RAs on twelve-month stipends are allowed a minimum of 10 working days of vacation which must be coordinated through the PI. Because of the continuous nature of the research work, a student may need to arrange for someone else in the lab to cover his or her duties if he or she is going to be absent. This could be another RA or it could be one of the non-student employees in the lab. Laboratories sometimes engage in collaborations with other laboratories, usually by agreement between the PIs. In these instances, students may be directed to perform work for another lab that does not relate to the work being done in their own labs and would, therefore, not be related to their dissertation research. One student estimated that she spends about ten percent of her time on collaborations with other labs

or outside companies. The university sometimes provides employees to clean and assist with tasks in a number of labs but sometimes RAs are responsible for cleaning and other chores in their labs that are not related to their own research.

Sometimes a PI may lose some or all of his or her funding, leaving the students working in a lab without a source of funds, which would necessitate the student having to seek work elsewhere. When a laboratory RA is left without funding, the university provides “backstop” funding until the student can find an RA position in another lab.¹⁰ Backstop funding can continue for up to nine months, although funding can extend for a year or more, depending on the circumstances.

The Pratt School of Engineering offers four PhD programs: Biomedical Engineering, Civil & Environmental Engineering, Mechanical Engineering & Material Science, and Electrical & Computer Engineering. Students apply for admission to a specific professor within the school and are admitted to work in that professor’s research group or lab. There are about 600 PhD students in the Engineering School. It usually takes five and a half to six years for students to earn a PhD in Engineering.

Students within the school of engineering begin their work in the lab as soon as they report to campus. Many of them have prior laboratory experience and begin work on experiments in the lab almost immediately. Their work in the lab continues throughout their degree program. Students are required to take 36 credit hours of courses and must serve two semesters as a TA. All students are required to serve as RAs throughout their program.

¹⁰ In other instances, as discussed below, a student may wish to leave a lab or the PI may want the student to leave.

Most engineering students stay with the same PI for the duration of their studies. However, PIs do not have to accept a student into their labs and, once the student becomes an RA, a PI can ask a student to leave the lab if the PI is not pleased with the RA's performance. Sometimes a student may not be happy with the PI or the lab and can seek to be placed in another one. Students are allowed some time to find a new lab and will generally be funded in the interim through the Graduate School's backstop funding. In one instance, a student was asked to leave a lab in her first year. She continued with her coursework and reviewed research in multiple labs. She was eventually able to find a new lab in which to work. In another instance, a student's lab lost funding but, because he was so far along in his studies, he could not be placed in another lab that related closely enough to his dissertation research. He was given the option of taking a Master's degree or having to start his dissertation over again with a different lab in a different area of research.

There are about 1280 PhD students in the School of Medicine's Basic Medical Sciences programs and about 190 research faculty. Unlike their counterparts in the Engineering School, students are not admitted to work in a particular lab and do not engage in research during their first two years. After their required RCR training, students rotate between laboratories every eight to twelve weeks while they complete their coursework. At the end of two years, students are expected to affiliate with a laboratory, where they will spend the next three to five years. Departments and programs within the Medical School have mentoring committees which meet with students and advise them on coursework and lab rotations that correspond to their backgrounds and interests. Students usually take their qualifying exams at the end of their second year or beginning of their third.

During their laboratory rotations, medical science students are funded through training grants or fellowships. When they affiliate with a lab, they are funded as RAs under the PI's grant. RAs typically spend about 60 hours a week in the lab. The PI is responsible for all funding for his or her lab including research expenses and salaries. The PI is also responsible for ensuring that students will be funded under a particular grant or project. As with RAs in the Engineering school, problems may arise between RAs and PIs in medical science program. This may occur three or four times a year. In most cases, the DGS can step in and mediate but, if the student or the PI ultimately decide that the student should affiliate with another lab, backstop funding is available, as discussed above.

ADMISSION AND READMISSION LETTERS

Applicants who have been accepted to a PhD program receive an offer of admission letter from the Graduate School as well as a letter from the school or department to which the student was admitted. Every year thereafter, students receive reappointment letters from their individual departments. These appointment and reappointment letters set forth the student's funding package, including any service requirement for the upcoming year. A number of these letters, in both redacted and template form, are included in the record and provide examples of the various types of funding provided to students and the service expected from them.

The Graduate School sends the prospective students one of several standard appointment letters depending on the type of funding the student(s) will receive for the first year. Some students are not required to perform any teaching or research service during their first year. These students may receive an "External Funding Letter" or a "Standard Fellowship Letter" that does not specify any service obligations. Students who receive a "Research Assistantship Letter" are notified that their "offer includes a first-year research assistantship, which will compensate

you with tuition remission and a stipend for the services you will be providing.” A standard “Teaching Assistant Letter” informs the student that “your stipend will consist, in part, of a salary that will be earned through providing teaching assistant support to your department or program...” Prospective students may also receive a letter stating that “[a]ny service requirements related to this offer of admission will be communicated to you directly by your admitting department or program.”

In addition to the letters sent by the Graduate School, individual departments or programs may send their own letters to applicants that set forth the funding package and any service requirements. The Business School advises applicants:

As part of your doctoral training and education, you would be expected to assist in research and teaching activities, with the specifics to be determined by the faculty in your area of study. We expect that research assistantship funds will be available for the second year and beyond in the program, averaging roughly \$3000 per year (about 4 hours per week); obtaining those funds depends upon you arranging to work with faculty members on research projects of mutual interest.

An admissions letter from Department of Romance Studies states that the admitted student will be offered a combination of fellowship and a research apprenticeship. “The research apprenticeship of \$_____ pays your work as a research assistant with a faculty member for no more than 8 hours per week...” The letter goes on to state that after the student’s first year in the program, support will be based on a combination of teaching and fellowship. “Typically, the

years of support are divided as follows: Year 1, fellowship and research assistantship; Years 2 and 3, teaching; Year 4, fellowship for dissertation research (often abroad); Year 5, teaching.”

Letters from the Electrical & Computer Engineering and Biomedical Engineering departments state that no “work services” are expected from the student for the first nine months. The remaining three months of the 12-month award will consist of a research assistantship payable from a professor’s grant.

The Sociology Department “guarantee[s] full funding for the first 5 years, with no work requirement for 1 year and at least 2 work-free summer fellowships. Funding in all non-fellowship years will be paid through a combination of research and teaching assistantships. Because teaching and research are fundamental to the academic enterprise, these service activities will be a valuable part of your professional development as well as a source of income.” A letter from the Department of Religion states that the student’s funding for the first year will consist of a fellowship and a research assistantship. “The research assistantship, which provides a salary of [redacted] for the academic year, requires a commitment from you for up to 4 hours per week on average for 28 weeks (Fall and Spring semesters) to support the research activities of our faculty.” All letters state that, as a condition of accepting the assistantship, the student will be required to provide evidence of employability as required by the U.S. government (an I-9 Form).

Students who are continuing in their programs receive an annual “reappointment letter” from their departments. These letters set forth the components of the students’ funding for the upcoming academic year, including how much of the stipends are allocated to fellowships and how much to assistantships. The DGS handbook directs departments to “fully describe the details of student funding and differentiate specifically between fellowship amounts paid to the

student and assistantship compensation for work performed (teaching and/or research).” DGSs are also directed that “[a]ny information concerning specific work assignments should be provided, if known.” Many of these letters contain similar language regarding service expectations and almost all of them state, like the appointment letters discussed above, that the students must provide evidence of employability.

A letter from the Religious Studies Department informed a student that his funding included “a stipend of \$16,030; if available to teach, you are also eligible for \$6000 in teaching assistantship.” A letter from the Sociology Department offered the student a “work stipend” of \$22,470 with the “understanding that you will teach for Sociology in the Fall and RA for professor Steve Vaisy in the Spring.” Most letters setting forth an assistantship amount state that the amount “represents a reasonable value for the services you will be providing.”

Reappointment letters from Engineering and Basic Medical Science departments for each student generally set forth that the student is being funded by a research assistantship through a specified professor’s research grant, to be paid in twelve monthly installments on the 25th of each month. For example, a letter from the Department of Electrical & Computer Engineering states that “the Research Assistantship, supported by Professor Brady’s research grant(s), consists of a twelve-month stipend of ----.’

The record also contains some letters that offer an assistantship to students and request that students to sign and return the agreements. These letters do not set forth the individual student’s general funding for the semester but rather deal only with the specifics of the assignment. Two of the letters set forth a monetary penalty if the student does not fulfill his or

her obligations¹¹. However, it was not clearly established whether all of these letters were sent to PhD students or were sent to Masters' program students.

REDUCTION OF STIPENDS

Two members of the Graduate School faculty, Dean Paula McClain and Dean Shanna Fitzpatrick, testified that the school does not permit departments to reduce a PhD students' funding when they fail to perform TA or RA duties. However, both witnesses admitted that reductions in stipends would not necessarily be brought to their attention. In September of 2016, a student contacted the Graduate School with concerns that her department was going to cut her stipend. The Graduate School advised the department that the student should continue to receive the full stipend. In another instance, the Graduate School allowed a reduction in stipend. Record evidence about both of these situations was limited because of privacy rights protected by the Family Educational Rights and Privacy Act (FERPA).

A student in the Religious Studies department had his stipend reduced twice. The first time occurred when he did not accept a TA assignment offered to him. It was unclear to him what time commitment was involved and he chose to focus on studying for exams. His stipend was also reduced during a semester when he was being paid to teach a course at Western Carolina University. During the Spring 2016 semester, another student in the same department complained that her stipend was going to be reduced if she went out of the Durham area for research. The department clarified its policy that stipends would not be reduced if TA spots were not available or when students' research required them to be away from campus but would

¹¹ For example, a form letter from the Department of Economics states, "Should your work be unsatisfactory, with professors thereafter reluctant to use you as a grader, or should you turn down assignments, the department reserves the right to reduce your stipend by \$25 for every hour less than 200. A warning will occur before any fines are implemented."

be reduced when a student was present but elected not to accept an available TA position. During the Fall 2016 semester, the department revised its policy to allow students in their third through fifth years to take two semesters off from acting as a TA with no reduction in their stipend.

ANALYSIS AND CONCLUSION REGARDING THE EMPLOYEE STATUS OF TAs AND RAs

In *Columbia University*, 364 NLRB No. 90 (2016), the Board recently held that student assistants are statutory employees when, in connection with their studies, they provide services under the direction of the university in exchange for compensation. The decision overruled *Brown University*, 342 NLRB 483 (2004) where the Board had determined that students could not be statutory employees because they were “primarily students and ha[d] a primarily educational, not economic, relationship with their university.” *Id.* at 487.

In concluding that students were employees under Section 2(3) of the Act, the Columbia Board applied the common law doctrine of agency, which “generally requires that the employer have the right to control the employee’s work, and that the work be performed in exchange for compensation.” *Columbia*, slip. op. at 15. The Board held that students were statutory employees because they performed teaching and research services directed by the university in exchange for compensation. “Statutory coverage is permitted by virtue of an employment relationship; it is not foreclosed by the existence of some other, additional relationship that the Act does not reach.” *Id.* at 2. Even where the economic component is relatively small in comparison to other aspects of the relationship, “the payment of compensation, in conjunction with the employer’s control, suffices to establish an employment relationship for purposes of the Act.” *Id.* at 6.

In the instant matter, it is clear that Duke invests substantial resources in insuring that PhD students learn to teach well and research effectively and students undoubtedly benefit from teaching and researching. It is also clear that the requirements to serve as a TA, Grader or RA is an integral part of their training and many times the work that they do is in furtherance of and even essential to their dissertations. Notwithstanding the above, the record also establishes that Duke benefits from the work that TAs and RAs perform. In this regard, Duke must provide instruction to its other students – classes for them must be taught. Research must also be undertaken to meet the expectations of those outside sources who have provided funds to the university for scientific research.

TAs, Graders and Humanities RAs all reduce the faculty's workload by performing duties that a faculty member would otherwise have to perform. In the courses they teach, instructors of record eliminate the need for a faculty member altogether. In research labs, RAs perform many tasks that non-student staff would otherwise do. The university also benefits from the research they do because the university owns any patents developed by laboratory RAs.

I do not find it significant that the Employer, unlike Columbia University, does not have a mandatory core curriculum or that some students receive training before they begin to teach instead of being “thrust wholesale into many of the core duties of teaching.” *Columbia* at 16. The *Columbia* Board merely noted that some students taught some courses contained in the undergraduate core curriculum, *Id.* at 14, and that although teaching was a degree requirement, students still assisted in “the business of universities by providing instructional services for which undergraduate students pay tuition, *Id.* at 16.

Here, the evidence demonstrates that PhD students teach or assist in teaching a number of undergraduate courses, including required courses. For example, the university requires that all

undergraduates in certain degree programs take three semesters of foreign language or otherwise reach a 300-level course. All introductory language courses in French, Spanish, Italian and Portuguese are taught by PhD students and adjunct faculty: tenured or tenure-track professors do not teach these courses. The Mathematics department also relies on PhD students to teach introductory courses even though teaching is not required in that department for students to get a PhD. The record shows that during the Fall 2016 semester, 34 of the 52 100-level courses offered had PhD students as instructors of record.

TAs and RAs receive compensation for their services. The Graduate School provides a variety of funding to PhD students unrelated to their service as TAs or RAs. However, that does not change the fact that students serving as TAs or RAs are performing services for the university, many of which are also performed by paid faculty members, staff and non-PhD students. Payments attributed to TA and RA services are paid through the university payroll system. The amounts are reported on a W-2 as regular income and students must provide I-9 employment verification. Throughout the Employer's manuals, handbooks and other documents, these payments are referred to as "wages" and "salaries." Duties are referred to as "work" and, although the Employer may prefer the term "service," those duties are mandatory. When students other than laboratory RAs voluntarily perform more duties than are required, they receive additional money for doing so. Finally, although the Graduate School contends that students' stipends are not reduced when they do not perform services, other record evidence shows that they are.¹² Even if the student's funding does remain the same, it would be

¹² Based on the minimal record evidence provided, it appears it is quite rare when a student is unable to meet the service requirements. Accordingly, examples of an exception or two to the service expectations for good cause does not override the overwhelming expectation that the service requirements must met by the PhD students.

comprised entirely of non-compensatory payments rather than a combination of compensatory and non-compensatory amounts.

The University directs the work of RAs and TAs through training and regulations. The faculty member to whom the student is assigned tells the student what tasks to perform and how to perform them. For example, TAs consult their assigned faculty member about how to grade student assignments. Some laboratory RAs may operate with a large degree of independence, but their research must still be within the terms of the grant and they must account for the cost of their research.

Poor performance by TAs and RAs may have consequences. A PI may ask that a student be removed from his or her lab. While this does not result in the student's dismissal from the program, the student will make no further progress on his or her degree until they find another lab. TAs who do not perform well may be required to undergo remedial training or to repeat the teaching assignment.

Inasmuch as the PhD students serving as TAs and RAs and related activities perform services for the Employer, under its direction and control, for which they are compensated, I find that they are employees within the meaning of Section 2(3) of the Act. I further find that a unit comprised of such employees to be appropriate for purposes of collective bargaining. Accordingly, I now turn to the consideration of an accurate unit description, eligibility determinations and the method of conducting the election.

UNIT DESCRIPTION

The Petitioner's proposed unit description includes the following job titles: Research Assistants, Teaching Assistants, Graduate Assistants, Laboratory Assistants, Teaching

Apprentices, Instructors, Graders, Preceptors, Section Leaders, and Tutors. The list of petitioned-for students that the Employer submitted shortly after the petition was filed contains only the following titles for PhD students: Teaching Assistant, Research Assistant, Graduate Assistant, and Grader. The only students whose titles were listed as “Tutor” were Masters’ students in Electrical/Computer Engineering and no record evidence addressed PhD students with that title. I will therefore exclude Tutors from the unit. Although the only students on the Employer’s list with the title Grader were also Masters students, I will include that title in the unit because the record demonstrated that PhD students do serve as Graders.

No evidence was presented by either party regarding the titles Laboratory Assistant, Preceptors or Section Leaders, so those titles will not be included in the unit description. I will include the title Instructor since the record shows that some students serve as Instructor of Record and have greater responsibilities than Teaching Assistants.

The record reflects that although they are assigned to a specific faculty member and course, Teaching Apprentices do not perform services to or for faculty members. They merely observe the class and meet with the faculty member to discuss what they observe. They receive audit credit for the course. Like other teaching courses and seminars, the apprenticeship merely prepares the student to serve as a TA. I will therefore exclude Teaching Apprentices from the unit.

There are about ten PhD students in the Carolina-Duke German Program, a joint program with a public university. The Employer asserts that the Board lacks jurisdiction over those students and that they lack a community of interest with the petitioned-for unit. No other evidence was presented regarding these students. To the extent that they hold any of the job titles designated, I will allow them to vote subject to challenge.

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The rulings at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All PhD students in Duke University departments housed at its campuses in Durham and Beaufort, North Carolina, who are working toward PhD degrees offered by the Duke Graduate School and who are employed by Duke University to provide instructional services in undergraduate or graduate-level courses or labs (including, but not limited to, Teaching Assistants, Graduate Assistants, Instructors, and Graders) or to provide research services (including but not limited to Research Assistants and Graduate Assistants); excluding all students at Duke Kunshan University and Duke-NUS Medical School, all students not working

towards PhD degrees offered by the Duke Graduate School and all other employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by Service Employees International Union CLC/CTW.

A. Election Details

During the hearing, the Employer argued strenuously that a manual election should be held in this matter as such elections are favored by the Board, where feasible. It further argued that a mail ballot election would be very difficult to conduct because it has multiple addresses for a number of students and an accurate mailing list would be very difficult to construct. The Employer contends that an election held over several days would provide sufficient time for the students to vote and given the transportation systems available, the students would be able to reach the polling locations without difficulty.

The Petitioner, on the other hand, argued that because of the number of campuses involved, the distance between campuses, and the inability to easily identify the days and times when the students will be on campus, that a mail ballot election is the most efficient means of conducting the election in this matter.

The record reflects that students are encouraged to receive their stipend payments by direct deposit but sometimes receive documents and correspondence through their departments, either by hand delivery or through departmental mailboxes. However, tax documents and reappointment letters contain addresses which indicate that they can be mailed as well. The

Petitioner notes that the Employer must provide W-2's which contain an address to the students and therefore those addresses can be used where the Employer has multiple addresses for the students on file.

Both parties were given an opportunity to argue their positions as to the election method which should be used during the hearing and were also advised they could do so in their post-hearing briefs. Their arguments, however, while long on means and methods they desired and the potential pitfalls of the other party's position provided little in the way of information as to how many students would be voting at particular locations if the election were to be conducted manually, which students would be voting at particular locations (information necessary to avoid potential duplicative voting or a large number of challenges should students not vote at their assigned polling area), or as to how many students there were with multiple mailing addresses. Thus, I am left with little factual information upon which to determine which election method would be most effective.

The parties did state on the record that if a manual election were to be held, it would be necessary to do so over two or three days, excluding Mondays and Fridays, from approximately 7 am to 9:30 pm each day at four separate locations (one for each campus) in order to enfranchise as many students as possible given that individual students may not be at particular locations on a given day.

Having reviewed the parties' positions and submissions on the record, on balance I am of the opinion that holding a **mail ballot** election would be the best means of conducting the election in this matter. Attempting to hold a manual election where the dates and times when the students' scheduled locations on campus on given days have not been provided, and may not be readily ascertainable, would be leaving the concern of the students' availability and ability to

vote much too much to chance. Holding elections at multiple sites at the same time could also result in numerous challenged ballots as a result of students (including those who are not eligible) voting or attempting to vote at locations other than the one to which they might be assigned. A mail ballot, on the other hand, while taking somewhat more time, would be targeted to the actual voters in the unit to addresses the employees have provided - thereby ensuring to the extent possible that each voter will receive a ballot and have the opportunity to vote.¹³

In light of the above, the election will be conducted by United States mail. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit at 10:00 a.m. on Tuesday, January 31, 2017, from the office of the National Labor Relations Board, Region 10, 233 Peachtree St NE, Harris Tower Ste. 1000, Atlanta, GA 30303-1504.

After receiving their ballots, voters who wish to vote must appropriately mark their ballots and return them in the provided return envelopes. Voters must sign the outside of the envelopes in which the ballots are returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and who do not receive a ballot in the mail by 4:30 p.m. February 7, 2017, should communicate immediately with Assistant to the Regional Director, Terry Combs, Terry.Combs@nlrb.gov, phone number 470-343-7477 so that a replacement ballot can be timely mailed.

All ballots will be commingled and counted at the Region 10 Subregional Office located at Republic Square, 4035 University Parkway, Suite 200, Winston-Salem, NC 27106-3325

¹³ I am, of course, mindful that the university asserts it has multiple addresses for some unknown number of employees. I will address this issue under **Voter List** below.

Phone: [\(336\) 631-5201](tel:3366315201) on February 21, 2017, at 10:00 a.m. In order to be valid and counted, the returned ballots must be received in the Region 10 Office prior to the counting of the ballots.

B. Voting Eligibility

The Employer contends that no special eligibility formula is needed and that the traditional eligibility requirement (those employees on the payroll immediately preceding the date of the direction of election) should apply. During the hearing, the Employer also argued that past service in one of the included unit positions was not indicative of an expectation of future employment.¹⁴ The Petitioner, on the other hand, contends that a one-year “look-back” eligibility formula should apply, to include not only students who are currently serving in the petitioned-for positions but those who have served in those capacities at any time during the past year.

The goal in crafting an appropriate eligibility formula is to “strike a balance between the need for an ongoing connection with a unit and concern over disenfranchising voters who have a continuing interest notwithstanding their short-term, sporadic or intermittent employment.” *Columbia University* at slip. op. 21-22, citing *Steiny & Co.*, 308 NLRB 1323, 1325 (1992) and *Trump Taj Mahal Casino*, 306 NLRB 294 (1992). The Board noted that, as here, “there are employees in the unit who, despite not being on the payroll at the time of the election, have a

¹⁴ Given that some departments allow students to take semesters off from their service requirements, that is technically true for a particular semester. However, it is of no moment inasmuch as the record is clear that the students have service requirements which must be met and until fully met, there is an expectation of further employment. Further, as discussed below students who continue their studies may elect to serve even after fully completing their required service.

past history of employment that would tend to signify a reasonable prospect of future employment. *Id.* at 22.

Under the particular circumstances presented here, payroll periods and cutoff dates are difficult to apply. Although students receive the compensatory portion of their stipends in equal monthly installments, once a student is funded, those payments will continue for the rest of the semester. Likewise, once they have begun serving in a unit position, the employees' service continues throughout the semester. Instead of the payroll date concept used in many circumstances, a better descriptor is the particular semester at issue. The current semester, Spring 2017, began on January 11. Therefore, under a traditional analysis, the payroll cutoff date would have been at the end of the Fall 2016 semester. Students who have unit positions this semester may or may not have been receiving compensatory stipend payments last semester. I will therefore use full semesters to describe eligibility periods.

It is clear from the record that students on nine-month stipends do not serve as RAs and TAs continuously during their degree program. Students in some departments may choose which semesters they serve while others may not. The fact that a student is not serving as a TA or RA during the semester is not an indication that they will not do so in the future. This is true even if a student has completed all of his or her required service. For example, students in their sixth year and beyond who may no longer be fully funded can still serve as TAs or instructors of record in order to generate income.

Students on twelve month stipends, who are funded through a grant and serve as RAs in labs, do so until they graduate. The work they do in their labs is directly related and essential to

progress towards their dissertation. Once these students begin to serve as laboratory RAs they serve every semester. While a student could be absent for periods of days or weeks during the semester with permission from their PI, they cannot remove themselves from their labs for a semester or more and still continue making progress toward their degree. Unlike TAs and RAs on nine-month stipends in other departments, there is no evidence that laboratory TAs' service is intermittent. Thus no look-back period is needed for these students. There could be a very rare case in which a laboratory RA is not receiving his or her stipend for the current semester yet expects to return in the future. If that is the case, that student may vote subject to challenge.

Based on the evidence adduced at the hearing and the positions of the parties, I am directing an election in the petitioned-for unit according to the following eligibility formula:

All unit employees who:

- 1) Receive a twelve month stipend and hold a unit position during the Spring 2017 semester, and/or
- 2) Receive a nine-month stipend and hold or have held a unit position during the Spring 2016, Fall 2016 or Spring 2017 semesters.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote.

Also eligible to vote using the Board's challenged ballot procedure are those individuals employed in the classifications whose eligibility remains unresolved as specified above and in the Notice of Election.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including the most recent local home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters. *Where the Employer has multiple addresses on file, the Employer is to use the addresses used on each voter's 2016 W-2 form.*

To be timely filed and served, the list must be received by the regional director and the parties by **January 20, 2017**. The list must be accompanied by a certificate of service showing service on all parties. The region will no longer serve the voter list.

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must

begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on E-File Documents, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election that will be issued in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the

Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting, and likewise shall be estopped from objecting to the non-distribution of notices if it is responsible for the non-distribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must

serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: January 18, 2017



CLAUDE T. HARRELL JR.
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
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Atlanta, GA 30303-1504